Supreme Court, U.S.
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No. 94-395

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

UNITED STATES OF AMERICA,

Petitioner,

v.

LORI RABIN WILLIAMS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent Lori Rabin Williams ("Williams") respectfully requests that this Court deny the petition for writ of certiorari seeking review of the decision by the United States Court of Appeals for the Ninth Circuit in this case. All relevant statutes are attached to this brief in Appendix "A".

SYNOPSIS OF CASE

The case as presented by the government in their petition is quite simple. Whether a tax refund suit may be brought by one who voluntarily pays the tax owing by another. As discussed below, however, the taxes in this case were not paid voluntarily and were not owing by the third person. The government is attempting to squeeze a round peg into a square hole to enable them to argue broader principles than the facts of this case warrant.

This case was decided at the District Court level by mutual submissions of motions for summary judgment. The total amount in controversy in this case is slightly over $40,000. All facts were stipulated. The Internal Revenue Service admitted both in their pleadings and in oral argument at both the District and Appeals level that the collection of taxes from Williams was erroneous.

The Ninth Circuit Court of Appeals agreed that the collection was erroneous and that both Title 28 U.S.C. 1346(a) and Title 26 U.S.C. 7422(a)[1] ("Section 1346(a)" and "Section 7422" respectively) provide a waiver of sovereign immunity to Williams when it has been proven (and in this case admitted by the government) that an erroneous collection has occurred. The Ninth Circuit Court of Appeals decision was based on a reading of the plain language of those statutes, and is attached to this brief as Appendix "B".

[1] All citations to code sections are to the Internal Revenue Code unless otherwise noted. The Internal Revenue Code is Title 26 of the United States Code. Section 1346(a)(1), the jurisdictional statute that is the centerpiece of the controversy in this case, is not in the Internal Revenue Code but resides in Title 28 of the United States Code.

This case is not the appropriate case to resolve the issues concerning Section 1346(a). As discussed in more detail later, Williams was the ex-wife of Jerrold Rabin ("Rabin"). Unlike the situation where an unrelated third party voluntarily pays the taxes of another and then sues for a refund, this case presents more convoluted side issues. These side issues include: (i) the definition of a "taxpayer" when an ex-spouse is concerned, (ii) an erroneous IRS lien being filed while a residential dwelling was in escrow, and (iii) the decision to pay the lien to allow escrow to close to avoid imminent foreclosure and a threatened lawsuit by the buyers, requiring consideration of the additional side issue of "duress."

In addition, this case was argued at both the District Court and Court of Appeals levels on the issue of whether or not the plain language of Sections 1346(a) and 7422 provided jurisdiction to a "non-taxpayer" to sue for a refund. The government argues that there is a wide split between the Circuit Courts of Appeal on this issue. Yet, in their petition for Certiorari to this Court, the government argues for the first time that the prerequisite administrative claim for refund required pursuant to Title 26 U.S.C. 6511(a) ("Section 6511") was not met because Williams was not the "taxpayer", and for that reason is not provided a forum to allow her to file a claim and sue for the refund.

There is no split of authority in the Circuit Courts of Appeal on that issue. In fact, recent Federal Court decisions have dismissed the government's argument as specious (see Section (C) of this brief in opposition). There is no dispute that compliance with Section 6511 (the so-called "administrative claim" statute) is a prerequisite to filing an action in District Court for a refund.

All the Circuits that have rendered opinions on section 6511 agree that this statute is a prerequisite to jurisdiction. Since this case was submitted as mutual summary judgment motions with the sole issue being jurisdiction under Sections 1346(a) and 7422, it hardly seems appropriate to grant certiorari to decide the "issue" of Section 6511. In a summary judgment motion, all facts alleged by the party against whom the motion is brought are assumed true.

In fact, the government never argued to the District Court that Section 6511 was not complied with. Williams filed an administrative claim pursuant to Section 6511 and it was denied, at which time she timely filed her action in District Court. Williams alleged in the jurisdictional section of her complaint that she had complied with the prerequisites of Section 6511, and the government did not dispute it. Therefore, it was effectively stipulated below that Williams had complied with filing her administrative claim. The government has reinvented this case at the Supreme Court level focusing their argument on Section 6511, but in so doing cannot continue to argue that this is a case that is appropriate for Supreme Court review, since there currently exists no split among the Circuit Courts regarding this new issue.

Lastly, the facts in this case are so egregious against the government they should weigh heavily against granting the petition. In essence, the government has admitted that they took $41,000 from a person who they admit did not owe the money, that such collection was in fact erroneous, and now refuse to give it back to her under the cloak of sovereign immunity and the ruse of non-compliance with procedural rules that were never argued below.

COUNTERSTATEMENT OF THE CASE

The government in their petition for certiorari make numerous factual representations which were never proven and are actually erroneous.

A. Rabin did not owe the entire tax liability collected from Williams

In their question presented, the government paraphrases the issue as a claim for refund by Williams to the Internal Revenue Service "to obtain the release of a federal tax lien on her property when the lien arose out of the tax liabilities of a third person." The third person they refer to is William's ex-husband Jerrold Rabin ("Rabin").

It is not a fact that Rabin owed the taxes in question.

The underlying tax liability in this case arose from the non-payment of payroll taxes by a partnership that was operating a restaurant called "Marco Pollo I." Rabin was a former partner in the Marco Pollo I partnership; however, he withdrew from the partnership prior to most of the payroll tax liabilities accruing. The government stipulated at the District Court level to the actions Rabin took in withdrawing from the partnership which enabled him to withdraw legally under California partnership law.

Therefore, the question presented is not as clear cut in this case as the government makes it appear. We are not in a situation where a party voluntarily pays the taxes of a third party, but rather under duress pays the taxes that *were not correctly determined to be owed* by the third party.

The government on several occasions makes these factual representations regarding Rabin owing the taxes in

question, but these bald assertions are without foundation. On page 4 of the government's petition, they state "the lien arose from taxes owed by her husband, Jerrold Rabin . . .", "the taxes were owed by Rabin separately", "a federal tax lien securing all taxes, interest and penalties owed by Rabin arose . . ." and continuing on page 5, "arising from Rabin's employment tax obligation." Later, the government again asserts as a fact that the underlying tax obligation was owed by her ex-husband Rabin, on page 8 they cite to a line of cases regarding the payment of a valid obligation by a third party volunteer, "several other circuits have agreed . . . . 1346(a)(1) does not create jurisdiction for tax refund suits brought by persons who have paid taxes *owed* by a third party," and on the same page "Respondent seeks a refund of taxes she paid that were *owed* by her husband". In this last statement, the government no longer considers Rabin the ex-husband of Williams, merely asserting that Rabin is Williams' husband. In all the statements above, the government leads this Court to believe that Rabin as a fact owed the payroll taxes.

In the government's motion for summary judgment in this matter filed with the United States District Court, on page 8, they acknowledge that "on December 31, 1987, Jerrold Rabin registered with the State Board of Equalization a notification that he was no longer a partner with Marco Pollo I, partnership [sic]. See copy of State Board of Equalization correspondence, dated February 4, 1992, and copy of Declaration of Publication attached as exhibits S & T, respectively." The government's motion and the exhibits were made a part of the excerpts of record filed with Court of Appeals as document no. 10. The California State Board of Equalization acknowledged that Rabin had effectively withdrawn from

the partnership as of December 31, 1987. The letter from the California State Board of Equalization is attached to this brief in opposition as Appendix "C".

The alleged tax liability that the government states as a fact was owing by Rabin accrued by quarters commencing with the 4th quarter of 1986 through the last quarter of 1988, the government exhibits indicated that the 2nd quarter of 1987 was not owing, presumably because it was paid although this was never established. Rabin was not a partner during the last four quarters of 1988 as indicated above. Most of the payroll tax liability accrued during the four quarters of 1988. Rabin's purported tax liability, therefore, was significantly less than half of what the government collected from Williams.

The resolution of the issue of standing when a "non-taxpayer" voluntarily pays the taxes owed by another are not presented in the fact pattern of this particular case, since it also can be argued that Rabin was not the "taxpayer" for the bulk of the payroll tax obligation. Therefore, this case is a bad candidate for Supreme Court Review on the issue presented by the government.

B. Williams did not pay the taxes voluntarily

The government in their petition asserts that other methods were available to Williams when confronted by an erroneous lien on her property by the IRS, other than authorizing escrow to close by paying the lien. They imply that this authorization makes the payment to the IRS out of escrow a "voluntary" payment. This assertion may be analogized to an armed robbery, and the thief who is holding the innocent victims at gun point later asserts that he should not be held accountable for his action or be ordered to return the valuables stolen,

since the victims paid voluntarily and had other alternatives to forking over the money. The thief argues that such alternatives included refusing to turn over the cash or suing the thief later for conversion.

The government created the situation. Without thorough investigation and with reckless disregard for property rights or due process, the IRS filed a lien against a residential property in the middle of an escrow. They now admit that the filing of the lien was in error, and that Williams did not owe the money to the IRS. However, they refuse to return the money by asserting that Williams had the right to file a lawsuit against them to "quiet title" pursuant to Title 28 U.S.C. 2410(a)(1). Ignoring for a moment the tremendous additional costs such an action would entail, it is also a fact omitted from the petition that the government never informed Williams of any of her rights or alternatives upon their filing the lien. Williams was under extreme duress at the time of escrow. Williams had found a buyer for her property while in foreclosure proceedings. The government's assertion that this case fits into the simple fact pattern of a person *voluntarily paying the taxes owed by another* is simply not true.

C. Cases refuting the government's new argument related to Section 6511

Two recent Federal decisions have discussed the government's new argument in this case, that the jurisdictional statute Section 1346(a)(1) must be read in conjunction with Section 6511 and Title 26 U.S.C. 7701(a)(14), and the government's novel interpretation of these two statutes they argue deny Williams standing in this case.

In *Brodey v. United States,* 788 F. Supp. 44 (D. Mass. 1991), the court specifically discussed the word "taxpayer" as a term of art. The court concluded that first, Section 1346(a)(1) conferred standing on the person against whom the tax has been erroneously collected. In determining this threshold issue, the court looked to the plain language of the statute and the decision in *Mona Martin v. United States,* 895 F.2d 992 (4th Cir., 1990).

Next, the court acknowledged that the jurisdictional statute, Section 1346(a)(1) must be read in conformity with other statutory provisions which qualify a taxpayer's right to bring a refund suit with certain conditions, pursuant to the United States Supreme Court decision in *Dalm v. United States,* 494 U.S. 596 (1990).

In considering the relevant tax code statutes, the court concluded that Section 6511 is silent on the issue of standing. "On its face, it is a statute of limitations. It uses the word 'taxpayer' in a natural, grammatically correct way from which I cannot find any inference of a limitation on standing". *Brodey* at pg. 48.

The court also concluded Section 7422 is silent on the issue of standing. "On its face it imposes a requirement for administrative exhaustion prior to lawsuit. The government does not assert its procedures were not followed. The word 'taxpayer' does not appear in the text of this section". *Brodey* at pg. 48.

"Section 7701(a)(14) is a definitional statute. The definition of 'taxpayer' appears to be inclusive of anyone at all who is subject to any internal revenue tax at all. The government has advanced no reasoning from which the court could transform this inclusive definition into an exclusive one. I cannot find any support for the

government's narrow reading of the term 'taxpayer' from the statutory definition in Section 7701(a)(14) or elsewhere in the Code". *Brodey* at pg. 48.

Earlier this year, in *Barris v. United States,* 851 F. Supp. 696 (W.D. Pa. 1994) cited both *Mona Martin* and *Brodey* with approval. "The rule that only those taxpayers who were actually assessed taxes by the IRS can bring suit for a recovery ignores important language in Section 1346(a)(1). It seems clear that in this case, plaintiff has alleged that an Internal Revenue tax has been erroneously or illegally collected from her. Thus, Section 1346(a)(1) confers jurisdiction on this court to hear this case.

"Section 6511(a) requires that a claim for refund 'shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid.' This section merely imposes a time limitation on the person filing the claim for a refund or an overpayment of tax. Ths use of the word 'taxpayer' in this statute of limitations does not constitute a limitation on standing."

The government's attempt to now argue the question of standing regarding Section 6511 makes this case inappropriate for Supreme Court review. The decision of the Ninth Circuit Court of Appeals did not address this issue, since the government never brought the issue to the attention of the Court nor argued this position in their briefs[2].

[2]The government did mention Section 6511 for the first time in a footnote to their brief to the Ninth Circuit Court of Appeals. In footnote 18 of that brief, the government mentions that an administrative claim under Section 6511(a) is a prerequisite to jurisdiction and quotes the statute, underlining and emphasizing the [footnote continued]

D. The government's argument that the Court of Appeals decision below provides a "haven for delay or evasion of tax liabilities" is a thinly veiled smoke screen

In their petition for certiorari, the government makes a statement that the decision of the Court of Appeals in this case "threatens to provide a haven for delay or evasion of tax liabilities." In the pure factual situation, where a third party voluntarily pays the taxes owed by another, and then wants his or her money back after the statute of limitations for collection against the original party who owed the taxes has expired, the government has a valid point. This case, however, does not present those facts.

In this case, we have an innocent party who under duress allowed funds to be paid to the IRS through an escrow for the disputed tax liability of her ex-husband. The IRS negligently recorded the lien, and ultimately admitted their error. The position adopted by the government in this case would effectively reward the IRS for their incompetence. The IRS would be permitted to operate using a standard far below due diligence in determining who is liable for taxes, and then when the incorrect party who was the victim of the IRS lien requests their money back all the IRS needs to do is admit their mistake but refuse to allow a refund relying on the doctrine of sovereign immunity.

word "taxpayer". Then in the same footnote, the government cites to Section 7701(a)(12) incorrectly for the definition of "taxpayer" (the actual statute is Section 7701(a)(14)). The government advances no argument, however, as to what these statutes mean in the context of the Williams case or that somehow they deny Williams standing to file a claim for refund. The government relied solely on their interpretation of Section 1346(a)(1) for that purpose.

The government has the audacity in this case to present an argument that allowing an innocent party to receive their money back for taxes they paid under duress and did not owe would effectively provide a haven for evasion, when the IRS had totally within their control and power the ability to determine who was the correct party to pay the taxes in the first place. If the government exercises a modicum of caution, due diligence and restraint, they would not be put in the position of having a statute of limitations run against them while they, like Don Quixote, chase windmills.

CONCLUSION

For all the preceding reasons, this case does not present a fact pattern that warrants review by the United States Supreme Court. We therefore respectfully request that the government's petition for certiorari be denied.

Respectfully submitted,

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October 1994

APPENDIX A

RELEVANT STATUTES

Title 28 U.S.C. 1346(a)(1)

The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

Title 26 U.S.C. 7422(a)

(a) No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

Title 26 U.S.C. 6511(a)

(a) Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever

of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

Title 26 U.S.C. 7701(a)(14)

The term "taxpayer" means any person subject to any internal revenue tax.

APPENDIX B

NINTH CIRCUIT DECISION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 92-56207

D.C. No. CV-91-5286-WMB

LORI RABIN WILLIAMS,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

OPINION

Appeal from the United States District Court
for the Central District of California
William Matthew Byrne, Jr., District Judge, Presiding

Argued and Submitted
March 10, 1994 – Pasadena, California

Filed May 19, 1994

Before: Harry Pregerson, Diarmuid F. O'Scannlain,
and Ferdinand F. Fernandez, Circuit Judges.

Opinion by Judge O'Scannlain

SUMMARY

Tax/Litigation and Procedure

The court of appeals reversed a district court judgment and remanded. The court held that a third party who is not liable for tax, but who pays it in order to remove a lien against property, may sue for a refund.

While they were still married, Jerrold Rabin and appellant Lori Williams purchased a house. The government assessed tax liabilities against Rabin. Rabin transferred his interest in the house to Williams as her separate property, then quit-claimed title to her. The government filed a lien against the property. Williams filed to dissolve the marriage and entered into an escrow agreement to sell the house. The governmnet filed another lien. Under protest, Williams paid money to the government so that escrow could close. The marriage was dissolved.

Williams filed an administrative claim for refund, then filed suit in district court for refund plus interest and costs. The government moved for summary judgment, arguing lack of jurisdiction on the ground that suits by third-party plaintiffs are not permissible under 28 U.S.C. §1346(a)(1). The court granted the government's motion.

[1] The language of §1346(a)(1) clearly permits such suit. Another circuit has found that the statute clearly allows one from whom taxes are erroneously or wrongfully collected to sue for a refund. [2] That reasoning is persuasive. [3] Other circuits' attempts to distinguish precedent in accord from this circuit are not persuasive. Those attempts failed to give sufficient attention to the plain language of §1346(a)(1).

COUNSEL

Philip Garrett Panitz, Staker and Gose, Camarillo, California, for the plaintiff-appellant.

Kevin M. Brown, United States Department of Justice, Washington, D.C., for the defendant-appellee.

OPINION

O'SCANNLIAN, Circuit Judge:

We must decide whether one who erroneously pays the taxes of another may sue for a refund.

I.

In April, 1975, Jerrold Rabin ("Rabin") and his then wife Lori Rabin (now Lori Williams) ("Williams") purchased a house in Pacific Palisades, California. On June 29, 1987, and March 28, 1988, the government assessed employment tax liabilities against Rabin. On October 20, 1988, Rabin transferred all of his interest in the house to Williams as her separate property. On October 25, 1988, Rabin recorded a quitclaim deed giving title to "Lori Williams an unmarried woman."[1] On November 10, 1988, the Internal Revenue Service ("IRS") filed the first in a series of tax liens against the property in order to satisfy outstanding employment taxes owed by Rabin and March Polo 1, a partnership in which Rabin was a general partner. On January 19, 1989, Williams filed a petition for dissolution of her marriage to Rabin.

On approximately May 9, 1987, Williams entered into an escrow agreement to sell the house. On June 26, 1989, the IRS recorded another lien. Under protest, Williams authorized disbursement of $41,369 to the IRS

[1] The couple was still married at the time.

so that he could convey clear title. On March 19, 1990, Williams' marriage to Rabin was dissolved.

After her administrative claim for refund was denied, Williams filed suit in federal district court under 28 U.S.C. §1346(a)(1) for a refund of the money owed by Rabin which she had paid to the IRS, plus interest, costs, and attorneys' fees. The parties filed cross-motions for summary judgment. The government argued lack of jurisdiction because 28 U.S.C. §1346(a)(1) does not allow suits by third-party plaintiffs. On September 2, 1992, the district court denied Williams' motion for summary judgment and granted the government's motion for summary judgment. The district court held that a third party who is not liable for a tax, but who pays it in order to remove a lien against property, may not sue for a refund under 28 U.S.C. §1346(a)(1). Williams timely appealed.

II

Jurisdiction is the only issue before this court. The government argues that section 1346(a)(1) limits standing to the "taxpayer," defined as the person against whom the taxes were assessed. Title 28 U.S.C. §1346(a) reads:

> The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of: (1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been exdessive or in any manner wrongfully collected under the internal-revenue laws. . . .

Williams contends that section 1346(a)(1) specifically grants jurisdiction for taxes that are "erroneously collected" which is precisely what happened to her. In

response, the government argues "that the Government's consent to be sued must be construed strictly in favor of the sovereign." *United States v. Nordic Village, Inc.*, 112 S.Ct. 1011, 1015 (1992) (internal quotations omitted).

[1] Although the government is correct that "[w]aivers of the Government's sovereign immunity, to be effective, must be 'unequivocably expressed,' " *id.* at 1014, we believe that the language of section 1346(a)(1) clearly permits such suit. The Fourth Circuit addressed this same issue in *Martin v. United States,* 895 F.2d 992 (4th Cir. 1990). In *Martin,* the IRS filed a lien against property which then belonged, after a divorce, to the former wife ("Martin"), to satisfy the tax liabilities of the former husband. Martin paid the tax in order to remove the lien so that she could sell the property with clear title. She then sued for a refund under 28 U.S.C. §1346(a)(1). The district court dismissed the suit for lack of jurisdiction, but the Fourth Circit reversed. The Fourth Circuit relied on "a plain reading of the statute which gives the district courts jurisdiction over civil actions brought against the government to recover any tax 'alleged to have been erroneously or illegally *assessed* or *collected.*' " *Martin,* 895 F.2d at 994. The court concluded that "[t]he statute clearly allows one from whom taxes are erroneously or wrongfully collected to sue for a refund of those taxes. The taxes in this case were erroneously collected from the appellant[ ] because [she] did not owe them." *Id.*

[2] We find the reasoning of the Fourth Circuit persuasive and adopt *Martin* as the law of this circuit. The facts in the case before us are similar. As in *Martin,* "there is no question in this case but that the taxes paid by the appellant[ ] were erroneously collected." *id.*; in

open court, the government conceded its 1989 lien was not valid against Williams' property.[2]

Our decision to follow *Martin* is consistent with prior precedent. In *Parsons v. Anglim,* 143 F.2d 534, 536 (9th Cir. 1944), we held that a widow who erroneously paid her husband's income taxes after his death had standing to bring suit for a refund because she had been told that if she did not pay her husband's taxes immediately, she would have to pay penalties to the government. Similarly, in *United States v. Halton Tractor Co.,* 258 F.2d 612 (9th Cir. 1958), this court granted standing to a third party who erroneously paid the taxes of a delinquent taxpayer. In *Halton Tractor,* two corporations, Halton and Durston, sold equipment to a contractor, Watson, and executed conditional sales contracts to secure payment. Because Watson owed approximately $10,000 in taxes to the government, the IRS put notices on the machinery stating "Property of the United States Government (Notice of Seizure)." These notices were incorrect because Halton and Durston had superior claims. After paying Watson's taxes to remove the lien, Halton and Durston did have standing, following *Parsons,* because the payments were not intended to benefit Watson or the government.

The government argues that subsequent legislation makes it doubtful whether *Parsons* and *Halton Tractor* are still applicable because in 1966, Congress adopted

[3] Our decision is consistent with the Supreme Court's requirement of an "unequivocal expression" to sustain a waiver of sovereign immunity. *United States v. Nordic Village, Inc.,* 112 S.Ct. 1011, 1014 (1992). That case concerned an ambiguous waiver of sovereign immunity under § 106 of the Bankruptcy Code, whereas the plain language of § 1346(a)(1) unambiguously covers *all* cases of erroneous tax assessment and collection.

section 7426 of the Internal Revenue Code, which explicitly authorized third-party suits against the government in the case of wrongful government levies. Two other circuits have so reasoned. In *Busse v. United States,* 542 F.2d 421 (7th Cir. 1976), the Seventh Circuit held that a third party who erroneously pays the taxes of another person could not bring a suit for refund under section 1346(a)(1). The court reasoned that *Halton Tractor* must be viewed in light of the fact that the Code at the time did not provide a remedy for nontaxpayers harmed by a wrongful government levy but that the addition of section 7426 addressed this problem and, therefore, section 1346 need not be contorted for equity's sake. *Id.* at 425. In *Snodgrass v. United States,* 834 F.2d 537 (5th Cir. 1987), the Fifth Circuit followed the Seventh Circuit and held that section 1346(a)(1) does not allow suit by a party other than the taxpayer against whom the taxes were assessed. *Id.* at 538.

[3] We are unpersuaded by the Fifth and Seventh Circuits' attempts to distinguish *Parsons* and *Halton Tractor.* Rather, we follow the better-reasoned analysis in *Martin* and reject *Busse* and *Snodgrass,* which fail to give sufficient attention to the plain language of section 1346(a)(1).

Since Williams has standing to sue under section 1346(a)(1), the judgment of the district court is reversed and the case is remanded for proceedings consistent with this opinion.

REVERSED and REMANDED.

APPENDIX C

LETTER FROM STATE BOARD OF EQUALIZATION

STATE OF CALIFORNIA [SEAL]

STATE BOARD OF EQUALIZATION

1020 N Street, Sacramento, California
(P.O. Box 942879, Sacramento, California 94279-0001)

WILLIAM M. BENNETT
First District, Kentfield

BRAD SHERMAN
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

BURTON W. OLIVER
Executive Director

February 4, 1992

Re: SR AB 12-695827

Jerrold F. Rabin
212 South Kraemer Blvd.
Placentia, CA 92670

Dear Mr. Rabin:

Our records indicate that the above account was closed effective December 31, 1987. The owners are listed as Jerrold F. Rabin and Nicholas Payton-Fearnley. Mr.

Payton-Fearnley continued in the business as a sole proprietor under a new account number.

Attached you will find a copy of the registration record from which I have taken this information.

I hope this information is helpful to you.

Sincerely,

/s/ Sandra Lee Steffen
Sandra Lee Steffen
Authorized Representative

DECLARATION OF PUBLICATION

[ORIGINAL FILED
OCT 08 1989
COUNTY CLERK]

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CNSB (Los Angeles)
205 S. Broadway, Ste. 720
P.O. Box 31
Los Angeles, CA 90053

DISSOLUTION OF PARTNERSHIP

MARCO POLLO #1

The undersigned says:

I am over the age of 18 years and a citizen of the United States. I am not a party to and have no interest in this matter. I am a principal clerk of the co-publishers of the Metropolitan News-Enterprise, a newspaper of general circulation in the City of Los Angeles, the County of Los Angeles, and the State of California, as adjudicated in Los Angeles Superior Court Case No. 601165. The notice, a true copy of which is attached, was published on the following date(s):

09/19/89

NOTICE OF DISSOLUTION
OF PARTNERSHIP

Public notice is hereby given that JERROLD F. RABIN and NICHOLAS PAYTON-FERNLEY heretofore doing business under the fictitious firm name and style of MARCO POLLO NO. 1 at 2924 Main Street, City of Santa Monica, County of Los Angeles, State of California, did on the 31st day of December, 1987, dissolve the said partnership and terminate their relationship as partners therein.

Said business in the future will be conducted by NICHOLAS PAYTON-FERNLEY who will pay and discharge all liabilities and debts of the firm and receive all monies payable to the firm.

Further notice is hereby given that the undersigned will not be responsible from this day on, for any obligation incurred by the other(s) in (his)(her)(their) own name(s) or in the name of the firm.

Dated at Santa Ana, California, this Fifth (5th) day of September, 1989.

/s/ JERROLD F. RABIN

I declare under penalty of perjury that the foregoing is true and correct. Executed at Los Angeles, California on 9/19/89 /s/ Linda Call
signature

CUSTOMER #000017
CONTROL #00045825

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